

**WISCONSIN ENERGY  
CORPORATION, INTEGRYS  
ENERGY GROUP, INC, PEOPLES  
ENERGY, LLC, THE PEOPLES GAS  
LIGHT AND COKE COMPANY,  
NORTH SHORE GAS COMPANY,  
ATC MANAGEMENT INC. and  
AMERICAN TRANSMISSION  
COMPANY LLC**

Docket No. 14-0496

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## Table of Contents

	<u>Page</u>
I. INTRODUCTION .....	1
II. OVERVIEW/SUMMARY .....	2
III. ARGUMENT .....	8
A. Section 7-204 Issues Contested or Partially Contested by JAs .....	8
1. 7-204(b)(1) .....	8
a. Recommit to complete AMRP by 2030 .....	8
b. Full Time Equivalent Employees.....	10
2. 7-204(f).....	13
a. The Commission Should Require the JAs to Implement a Pipeline Safety Management System for the Gas Companies as a Condition of Approval of the Transaction .....	13
b. The Commission Should Order PGL to Implement a Program to Move All Inside Customer Meters to Accessible Outside Locations Within 10 Years From the Effective Date of the Transaction .....	14
B. Section 7-204 Issues Resolved with JAs .....	16
1. 7-204(b)(2) and (b)(3) .....	16
2. 7-204(b)(4) .....	16
3. 7-204(b)(5) .....	16
4. 7-204(b)(6) .....	16
5. 7-204(b)(7) .....	16
6. 7-204(c).....	16
C. Section 7-101 and Section 7-204A .....	16
D. Section 6-103 and 9-230 .....	16
E. Purchase Accounting Entries.....	16
F. Intervenor Proposed Merger Conditions Opposed by Staff .....	16
1. AG Proposed Riders .....	16
2. CITY/CUB Proposed Fixed Customer Charge Freeze .....	17
3. AG Proposed Cap on Residential Revenue Recovery Through Fixed Charges.....	17
G. Other .....	17
1. JAs' List of All Commitments and Conditions Agreed to by JAs.....	17

2. JAs' Other Finance Related Commitments with Staff.....	18
H. Commissioners' Data Request .....	18
I. Staff's Proposed Post-Hearing Conditions Resulting From Commission- Initiated Investigation, Docket No. 15-0186 .....	18
IV. CONCLUSION.....	20

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>WISCONSIN ENERGY</b>	:	
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<b>ENERGY GROUP, INC, PEOPLES</b>	:	
<b>ENERGY, LLC, THE PEOPLES GAS</b>	:	
<b>LIGHT AND COKE COMPANY,</b>	:	
<b>NORTH SHORE GAS COMPANY,</b>	:	
<b>ATC MANAGEMENT INC. and</b>	:	
<b>AMERICAN TRANSMISSION</b>	:	<b>Docket No. 14-0496</b>
<b>COMPANY LLC</b>	:	
<b>Application pursuant to Section 7-</b>	:	
<b>204 of the Public Utilities Act for</b>	:	
<b>authority to engage in a</b>	:	
<b>Reorganization, to enter into</b>	:	
<b>agreements with affiliated interests</b>	:	
<b>pursuant to Section 7-101, and under</b>	:	
<b>the Public Utilities Act to effectuate</b>	:	
<b>the Reorganization.</b>	:	

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**REPLY BRIEF OF THE  
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.800 of the Rules of Practice (83 Ill. Adm. Code 200.800) of the Illinois Commerce Commission’s (“Commission”), respectfully submits its Reply Brief in the above-captioned matter.

**I. INTRODUCTION**

In addition to Staff and the Wisconsin Energy Corporation, Integrys Energy Group, Inc., Peoples Energy, LLC, The Peoples Gas Light and Coke Company (“Peoples Gas”

or “PGL”) and North Shore Gas Company (“North Shore”) (collectively “Gas Companies”), ATC Management Inc. and American Transmission Company LLC (collectively “Joint Applicants” or “JAs”), the following parties submitted Initial Briefs in this matter: jointly, the Citizens Utility Board (“CUB”) and the City of Chicago (“City”) and on its own, the People of the State of Illinois by Attorney General Lisa Madigan (“AG”). Staff’s Reply Brief follows.

## **II. OVERVIEW/SUMMARY**

While most issues have been resolved between Staff and JAs (See Appendix A, Staff Initial Brief), a few issues remain in dispute (See Appendix B and C, Staff Initial Brief). Despite the agreements reached between JAs and Staff, the Commission should not approve the Joint Applicants’ reorganization unless it adopts each of Staff’s conditions set forth in Appendix A, Appendix B<sup>1</sup>, and Appendix C<sup>2</sup> to Staff’s Initial Brief, for the reasons identified below and/or set forth in the Staff Initial Brief. Subject to the arguments made below, Staff stands by its positions set forth in its Initial Brief and the failure to address a specific issue raised in a parties initial brief, does not constitute a change in position from Staff’s Initial Brief, or a waiver of any position or argument expressed therein.

In its Initial Brief, Staff proposed thirty-one merger conditions on the JAs’ proposed reorganization. The JAs have proposed and/or agreed to forty-five conditions and/or

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<sup>1</sup> As discussed below, Staff has a revision to its Initial Brief, Appendix B, condition #3 and an alternative condition to Initial Brief, Appendix B, condition #4.

<sup>2</sup> As discussed below, Staff and the JAs have reached agreement on the Staff conditions related to the Commission investigation in docket no. 15-0186.

commitments. (JAs IB, Appendix A.) Twenty-five of Staff's thirty-one conditions (Staff IB, Appendix A.), were not opposed by the JAs in their Initial Brief. Four of Staff's other conditions (Staff IB, Appendix B.) were also addressed by the JAs in their Initial Brief. While the JAs believe there is agreement between Staff and the JAs on all of the conditions (JAs IB, 9), this belief is not correct; there is not complete agreement on the four conditions, set forth in Appendix B to Staff's Initial Brief. The final two conditions (Staff IB, Appendix C) proposed by Staff, arose from the recent initiation of Docket No. 15-0186. Subsequent to the filing of initial briefs, Staff and JAs came to agreement on two conditions related to the Commission investigation in docket No. 15-0186.

Table I below, lists Staff's thirty-one proposed conditions and the corresponding or related JAs' commitments/conditions and whether there is agreement between JAs and Staff on the condition/commitment.

**Table I**

<b>Description of Staff Proposed Condition<sup>3</sup></b>	<b>Staff Condition No., Source<sup>4</sup></b>	<b>JAs' Condition-Commitment No., Source</b>	<b>Is there agreement between Staff and JAs?</b>
1. Implementation of the recommendations contained in the final investigation report by Liberty on AMRP	#1, Appendix A	#9, Appendix A	Yes
2. PGL's cooperation with Staff and its consultants in the verification of the implementation of the	#2, Appendix A	#10, Appendix A	Yes

<sup>3</sup> The specific Staff condition language is set forth in the respective appendices to Staff's Initial Brief.

<sup>4</sup> The source is the Appendix to the respective parties Initial Brief.

Recommendations from the final investigation report by Liberty on AMRP			
3. PGL provide semi annual written reports on the implementation of recommendations from the final investigation report by Liberty on AMRP	#3, Appendix A	#11, Appendix A	Yes
4. Condition #24 from Docket No. 06-0540	#4, Appendix A	#12, Appendix A	Yes
5. Gas Companies minimum capital investment levels	#5, Appendix A	#13, Appendix A	Yes
6. Future rate cases tracking of transaction costs of the reorganization	#6, Appendix A	#16, Appendix A	Yes
7. Transaction costs and transition costs to be separately tracked and identified	#7, Appendix A	#17, Appendix A	Yes
8. Push-down accounting entries	#8, Appendix A	#18, Appendix A	Yes
9. Any and all merger savings shall flow to ratepayers	#9, Appendix A	#19, Appendix A	Yes
10. No cost recovery from ratepayers for transaction costs incurred to accomplish reorganization	#10, Appendix A	#20, Appendix A	Yes
11. Cost recovery from rate payers for transition costs limited to savings	#11, Appendix A	#21, Appendix A	Yes
12. Interim WEC Energy Group AIA	#12, Appendix A	#22, Appendix A	Yes
13. Final WEC Energy Group AIA approved	#13, Appendix A	#23, Appendix A	Yes

in Docket Nos. 12-0273 and/13-0612			
14. FORM 21 Supplemental Information	#14, Appendix A	#24, Appendix A	Yes
15. Semi-annual progress report on status of conditions imposed in Docket No. 14-0496	#15, Appendix A	#25, Appendix A	Yes
16. WEC CEO Annual appearance before ICC addressing compliance with conditions imposed in Docket No. 14-0496	#16, Appendix A	#26, Appendix A	Yes
17. Separate credit facilities	#17, Appendix A	#27, Appendix A	Yes
18. Lending to non-utility affiliates	#18, Appendix A	#28, Appendix A	Yes
19. Prohibit guaranteeing of obligations to non-utility affiliates	#19, Appendix A	#29, Appendix A	Yes
20. WEC to notify ICC before increasing its proportion of non-regulated operations and indebtedness	#20, Appendix A	#30, Appendix A	Yes
21. NS and PGL register with SEC or in alternative provide a study showing costs and savings from not registering	#21, Appendix A	#32, Appendix A	Yes
22. Notification to ICC of JA's post merger capitalization	#22, Appendix A	#31, Appendix A	Yes
23. Study of appropriate capital structure	#23, Appendix A	#33, Appendix A	Yes
24. JAs commit to not seek recovery of rate case expense	#24, Appendix A	#45, Appendix A	Yes



related to size adjustments			
25. JAs to file copies of all credit rating reports, if Mr. Gorman's dividend restriction condition is rejected	#25, Appendix A	#34, Appendix A	Yes
26. PGL should be ordered to recommit to complete AMRP by 2030	#1, Appendix B	#5, Appendix A	No
27. FTE	#2, Appendix B	#2, Appendix A	No
28. JAs should be required to Implement a Pipeline Safety Management System (PSMS) at the Gas Companies	#3, Appendix B	#14, Appendix A	Yes <sup>5</sup>
29. PGL should be required to implement a program to move all Inside customer meters to accessible outside locations within 10 years from the effective date of the transaction	#4, Appendix B	#15, Appendix A	No <sup>6</sup>
30. JAs shareholders responsibility for expenses, costs, fines, penalties, fees or economic losses of any description whatever, arising out of unlawful or	#1, Appendix C	n/a	Yes <sup>7</sup>

<sup>5</sup> As discussed later on in this reply brief, Staff is willing to modify its Appendix B, condition #3 to allow Peoples Gas two years, instead of one year, from the transaction close to develop a PSMS plan.

<sup>6</sup> As discussed later on in this reply brief, Staff has an alternative condition with regard to Peoples Gas moving inside meters to the outside or to an accessible inside location.

<sup>7</sup> Subsequent to the filing of initial briefs, Staff and JAs reached agreement on the Staff conditions related to the Commission investigation in docket no. 15-0186.

criminal activity discovered in the course of any investigation into the two anonymous whistleblower letters currently the subject of a Commission-initiated investigation in Docket No. 15-0186			
31. Termination by WEC of employment or contractual relationships with individuals found to have been improperly or illegally involved in AMRP audit.	#2, Appendix C	n/a	Yes <sup>8</sup>

The Intervenor has proposed some of their own conditions to which, in their opinion, the transaction should be subject. Staff has not addressed or has specifically taken no position on some of the Intervenor's conditions (Staff IB, 47 (Gorman proposed to condition dividends on AMRP targets).) There are several conditions proposed by the AG and CUB/City which Staff opposes. Three conditions which Staff opposes are the AG's two proposed new rider conditions and the City/CUB proposed condition for a fixed customer charge freeze. These conditions were addressed in detail in Staff's Initial Brief, (Staff IB, 43-45) and nothing in the AG's or City/CUB's Initial Briefs has caused Staff to reconsider its position on these proposed conditions. The AG also proposed in its initial brief a new condition. The AG's condition would cap the residential revenue recovered

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<sup>8</sup> Subsequent to the filing of initial briefs, Staff and JAs reached agreement on the Staff conditions related to the Commission investigation in docket no. 15-0186.

through fixed charges at 40%. Staff opposes this condition for the reasons set forth below (See, III., F., 3.)

### **III. ARGUMENT**

#### **A. Section 7-204 Issues Contested or Partially Contested by JAs**

##### **1. 7-204(b)(1)**

##### **a. Recommit to complete AMRP by 2030**

In Docket No. 09-0166/0167 (Cons.) (“2009 Rate Cases”) the Commission ordered Peoples Gas to complete its Accelerated Main Replacement (“AMRP”) by 2030. Consistent with the 2009 Rate Cases order, Staff proposed the following condition with respect to AMRP:

Joint Applicants will reaffirm Peoples Gas’ commitment to the Commission in Docket Nos. 09-0166/09-0167 (Consol.) to complete the Accelerated Main Replacement Program (“AMRP”) by the end of 2030.

(Staff Ex. 9.0, 15; Staff IB, Appendix B, #1) JAs and the AG argue on the other hand that the AMRP completion date of 2030 was tied to Peoples Gas’ recovery of AMRP costs through Rider ICR. (JAs IB, 13 (“... Peoples Gas will continue the AMRP on the same basis as it currently does: with the intention of completing the AMRP by 2030, assuming it receives and continues to receive appropriate cost recovery ...”); AG IB, 33 (“... the Commission’s directive to have Peoples Gas complete the AMRP by 2030 was made only in the context of approving Rider ICR. ... ”)) JAs therefore, proposed the following condition instead:

Peoples Gas will continue the Accelerated Main Replacement Program (“AMRP”), assuming it receives and continues to receive the appropriate cost recovery, with a planned 2030 completion date.

(JAs IB, Appendix A, #5)

The JAs' and AG's arguments and JAs' proposed condition #5 should be rejected. Staff addressed the issue of AMRP and cost recovery in its initial brief and will not repeat all of those arguments here. (Staff IB, 8-10.) The Commission in the 2009 Rate Cases order did not tie the 2030 completion date of AMRP to cost recovery. The Commission found that completion of AMRP by 2030 was necessary and in the public interest. The Commission's order stated that:

Due to the many benefits that the accelerated plan provides to ratepayers, the Commission is of the opinion that time is of the essence and hereby requires completion of the acceleration plan project by 2030. Any variance from this completion date will require the Company to seek the Commission's approval.

(North Shore Gas Company and the Peoples Gas Light and Coke Company, ICC Order Docket Nos. 09-0166/0167 (Cons.), 196, January 21, 2010 (emphasis added). There is no language in the 2009 Rate Cases order that states or even suggests that AMRP's 2030 end date was dependent upon rider cost recovery. Instead, the 2009 Rate Cases order provides that any change from that 2030 end date would require Commission approval. (Staff IB, 10) Accordingly, the JAs' condition # 5 should be rejected and Staff's condition #1, from Appendix B to Staff's initial brief should be adopted.

Clearly, the AG does not support a 2030 end date for AMRP, and therefore proposes the condition that the AMRP 2030 completion timeline be reassessed. (AG IB, 59) However, the AG omits one vital consideration in arguing that "the Commission must require the Joint Applicants to commit to improving the current operation of the AMRP by reassessing the scale and timeline of the program to a manageable level." (Id., 59-60.) As Staff witness Harold L. Stoller testified, the AG (and other Intervenors) ignore the pipeline safety implications of any decision to delay AMRP completion beyond the

Commission's mandated 2030 date. (Staff Ex. 8.0, 3.) Specifically, the AG ignores the nature of the cast and ductile iron piping materials that lose their strength over time through the processes of graphitization and corrosion. (Id., 5.) The age of the cast iron, chemistry of the soil around the pipe, electrical current resistivity or conductivity of the soil, stray electrical current presence in the soil, soil moisture and aeration fluctuations, and corrosion rates are factors that all can contribute to unpredictable graphitization rates. (Id., 4-5.) Both cast and ductile iron are also subject to corrosion which causes the iron pipe in any gas system to become less strong and more brittle. Id. Additionally, the congested utility underground in Chicago, combined with the frigid winter climate, causes soil disturbances that only further compromise the integrity of these obsolescent and in some cases ancient piping materials. (Id., 7.) This confluence of factors has profound public safety implications, potentially compromising the life, health, safety and property of Peoples' customers and those who reside in its service territory. (Id., 7-8.) And, that risk, while it cannot be precisely quantified, and regardless of how unquantifiable it might be, increases with the passage of time. (Id., 8.) Extending the end date for AMRP will most certainly increase that risk, and the AG's proposed condition should be rejected. (Id., 9.)

**b. Full Time Equivalent Employees**

Staff proposed the following condition with respect to Full Time Equivalent Employees ("FTEs"):

Joint Applicants agree to maintain a minimum of 1,356 FTEs for Peoples Gas, 177.7 FTEs for North Shore, and 493 FTEs for Integrys Business Support for two years after the close of the transaction. The Joint Applicants also agree to the extent it implements any recommendations in the final report on the Peoples Gas' AMRP investigation that require the hiring of additional personnel, those additional personnel shall not count toward the FTE values previously identified and the Joint Applicants shall track them separately.

(Staff IB, Appendix B, #2; Staff Ex. 9.0, 21) The rationale for Staff's condition is straightforward. The number of employees the JAs will retain after the close of the reorganization transaction is vital in determining whether the proposed reorganization will diminish the Gas Companies' ability to provide adequate, reliable, efficient, safe and least-cost public utility service. (220 ILCS 5/7-204(b)(1).) Reducing employee levels below the levels approved by the Commission from the Gas Companies most recent rate cases could cause detrimental results for ratepayers. (Staff IB, 11) In addition, since the results of the Liberty audit are unknown, the Commission should order that any recommendations from the Liberty review of Peoples Gas' AMRP that result in additional headcount, shall not count toward the existing FTE commitment values.

The JAs proposed the following primary condition:

WEC Energy Group will maintain at least 1,953 full-time equivalent employment ("FTEs") positions in the State of Illinois for two years after the Reorganization closes.

(JAs IB, Appendix A, #2) The JAs' condition should be rejected for the following reasons:

- JAs' FTE number is in the aggregate and not broken down by utility and affiliate service company,
- JAs' FTE number is not consistent with the FTE numbers the Gas Companies projected in their most recent rate cases, and
- JAs FTE number does not consider the possibility that the Liberty Consulting Group's audit of Peoples Gas' AMRP could result in recommendations to increase staffing levels in some areas of Peoples Gas.

In Docket Nos. 14-0224/0225 (Cons.) ("2014 Rate Cases"), the Gas Companies requested rates based on the FTEs language Staff proposes for the Gas Companies, which were the same FTEs approved by the Commission. (North Shore Gas Company

and the Peoples Gas Light and Coke Company, ICC Order Docket Nos. 14-0224/0225 (Cons.), 59 and 63, January 21, 2015.) It is reasonable for the Commission to bind the JAs to those same Gas Company FTE levels in this case. Finally, since the Liberty Consulting Groups audit is not yet complete, those FTEs are independent of any staffing level recommendations that could be made by Liberty.

In the alternative, JAs proposed the following alternative condition:

The Joint Applicants agree that that Gas Companies will maintain at least 1,534 FTEs for two years after the reorganization closes<sup>9</sup>.

(JAs IB, 19, footnote 4.) While the JAs alternative condition addresses in part the first and second bullet points above, the alternative condition provides no specific FTE commitment for the Gas Companies' affiliate service company, Integrys Business Support, despite the fact that the JAs 1,953 FTE commitment is based in part upon a head count of 493 FTEs at Integrys Business Support. (Staff Ex. 2.0, 26,). In addition, the JAs' alternative condition fails to contain language addressing the fact that the Liberty Consulting Group's audit of Peoples Gas' AMRP could result in recommendations to increase staffing levels in some areas of Peoples Gas. For these reasons, and those previously stated in Staff's initial brief, the Commission should reject both the JAs' condition #2 and alternative condition #2, and instead adopt Staff's condition #2, from Appendix B to Staff's initial brief.

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<sup>9</sup> While not specifically stated in the JAs' alternative condition #2, it appears that JAs propose 1,356 FTEs for Peoples Gas and 177.7 FTEs for North Shore as part of its condition. (JAs IB, 19.)

**2. 7-204(f)**

**a. The Commission Should Require the JAs to Implement a Pipeline Safety Management System for the Gas Companies as a Condition of Approval of the Transaction**

Staff proposed the following condition regarding a Pipeline Safety Management System (“PSMS”) for the Gas Companies:

The JAs shall work with Staff to implement a PSMS for the Gas Companies. The JAs shall produce a draft PSMS for Commission approval within one year of the close of the transaction.

(Staff IB, Appendix B, #3.) The JAs propose the following condition:

The Joint Applicants shall work with Staff to plan and develop a Pipeline Safety Management System for the Gas Companies during the two years after the close of the Reorganization.

(JAs IB, Appendix A, #14.) One difference between Staff’s proposed condition and the JAs’ is the time frame for a draft plan to be prepared by the Gas Companies. The JAs propose two years, while Staff proposes one year. The other difference is Staff’s condition makes clear that the plan is subject to Commission approval. The JAs’ condition #14 does not address this point. Staff is encouraged by the JAs’ agreement to develop a PSMS, and while in Staff’s opinion a draft plan could be developed within one year from the close of the transaction, if the Gas Companies in fact need two years to develop such a draft plan, then Staff will defer to the Gas Companies on that issue provided that the plan is fully subject to Commission approval. Accordingly, Staff proposes the following revised condition #3 from Appendix B to Staff’s Initial Brief, concerning PSMS:

The JAs shall work with Staff to implement a PSMS for the Gas Companies. The JAs shall produce a draft PSMS for Commission approval within ~~one year~~ two years of the close of the transaction.



**b. The Commission Should Order PGL to Implement a Program to Move All Inside Customer Meters to Accessible Outside Locations Within 10 Years From the Effective Date of the Transaction**

Staff proposed the following condition regarding the relocation of inside meters:

Any meter that is part of AMRP should be moved outside or to an accessible location inside as part of AMRP by no later than 2030. Any meter not part of AMRP today or going forward must be moved outside or to an accessible location inside within 10 years.

(Staff IB, Appendix B, #4.) The JAs propose the following condition regarding the relocation of inside meters:

With respect to indoor meters that are associated with pipe to be replaced as part of AMRP, the Joint Applicants agree that the decision process for leaving meters inside, or not centrally located, needs to be based on a common set of expectations that are uniformly applied. Within six months after the close of the Reorganization, the Joint Applicants will develop a new process for Staff review, with standard criteria and approvals, describing when Peoples Gas will allow a meter to stay inside or in a decentralized location. Peoples Gas will implement the new process and, as part of its discussions with Staff, work on developing and implementing refinements to the process.

(JAs IB, Appendix A, #15.) From this proposal, it appears to Staff that Peoples Gas proposes to prepare a plan, without input from Staff, providing the bases pursuant to which Peoples Gas will or will not move a meter. In essence, JAs' condition language would give Peoples Gas a unilateral basis for never moving certain meters. Staff's language on the other hand, requires that inside meters will either be moved outside, or to an accessible location, within certain time frames. Staff's condition language is the only condition which guarantees that all inside meters, after a certain point in time (2030 for meters associated with AMRP and within 10 years for non-AMRP), will be accessible to Peoples Gas. For that reason and those previously stated in Staff' Initial Brief, the

Commission should reject JAs' condition #15 (JAs IB, Appendix A #15), and instead adopt Staff's condition #4 set forth in Staff's Initial Brief, Appendix B.

In the alternative, if the Commission believes that there may be some instances where some inside meters should not be moved, Staff proposes modifications to the JAs' proposed condition # 15. Staff's modifications address the situation where Staff and Peoples Gas are unable to reach a common agreement on the process for determining whether certain meters remain inside, or are not relocated to an accessible inside location. The JAs' proposed condition #15 assumes that Staff and Peoples Gas will be able to reach complete agreement on the process for determining whether certain meters remain inside, or are not relocated to an accessible inside location. While Staff is hopeful that such a process can be worked out between it and Peoples Gas, it is possible that such agreement may not be reached. In the event Staff and Peoples Gas are not able to reach agreement, Staff recommends that Peoples Gas be required to file a petition with the Commission initiating a new docket seeking the approval of its process. In that proceeding, Staff and Peoples Gas would have the opportunity to provide testimony and argument supporting its proposed process, with the Commission ultimately deciding the issue.

Consistent with the above, Staff proposes the following revisions shown in underline to JAs' condition #15 from Appendix A to JAs Initial Brief, concerning Peoples Gas' inside meters:

With respect to indoor meters that are associated with pipe to be replaced as part of AMRP, the Joint Applicants agree that the decision process for leaving meters inside, or not centrally located, needs to be based on a common set of expectations that are uniformly applied. Within six months after the close of the Reorganization, the Joint Applicants will develop a new process for Staff review, with standard criteria and approvals, describing when Peoples Gas will allow a meter to stay

inside or in a decentralized location. If Staff and Peoples Gas are unable to reach agreement on a process for leaving some meters inside or not relocating all meters to an accessible inside location, then Peoples Gas shall file a petition no later than eight months after the close of the transaction for the initiation of a new docket seeking approval of its proposed process. In that new proceeding, Staff and Peoples Gas will have the opportunity to provide testimony and argument supporting its proposed process for Commission consideration. Regardless of whether Staff and Peoples Gas reach complete agreement on the process or the Commission ultimately decides on the process to be implemented, Peoples Gas will implement the new process and, as part of its discussions with Staff, work on developing and implementing refinements to the process.

**B. Section 7-204 Issues Resolved with JAs**

1. 7-204(b)(2) and (b)(3)
2. 7-204(b)(4)
3. 7-204(b)(5)
4. 7-204(b)(6)
5. 7-204(b)(7)
6. 7-204(c)

**C. Section 7-101 and Section 7-204A**

**D. Section 6-103 and 9-230**

**E. Purchase Accounting Entries**

**F. Intervenor Proposed Merger Conditions Opposed by Staff**

**1. AG Proposed Riders**

The AG proposes that two new riders be imposed on the Gas Companies. (AG IB, 70-76.) One of the riders is intended to address potential savings from the Integrys Customer Experience (“ICE”) project, while the other rider is intended to address the difference between employee counts reflected in the Gas Companies’ 2014 Rate Cases and those reflected in this docket. These two rider proposals would be contrary to the

law, and the Commission should reject the proposed rider conditions, for the reasons set forth in Staff's Initial Brief. (Staff IB, 43-45.)

**2. CITY/CUB Proposed Fixed Customer Charge Freeze**

**3. AG Proposed Cap on Residential Revenue Recovery Through Fixed Charges**

The AG recommends as a condition to the JAs' reorganization, that there be a cap of 40% of the residential revenue requirement recovered through the residential fixed charges. (AG IB, 65-67.) In the Gas Companies 2014 Rate Cases, the Commission recently set new rates for the residential class where the fixed charges were lowered from those set in the prior rate cases. (North Shore and Peoples Gas, ICC Order Docket No. 14-0224/14-0225 (cons.) 176, January 21, 2015.) If the Commission wanted the fixed charge recovery of the revenue requirement to be set even lower than what it set in the most recent rates cases for the Gas Companies, it would have so ordered. The Commission should base its decisions about rate design on the evidence in each rate case and not impose an overall cap on the percentage of fixed cost recovery independent of cases-specific evidence. Staff recommends the Commission reject the AG's proposed condition.

**G. Other**

**1. JAs' List of All Commitments and Conditions Agreed to by JAs**

JAs' Initial Brief, Appendix A, lists all of the commitments and or conditions agreed to by the JAs as of the filing of initial briefs. With the exception of conditions/commitments: 2, 5, 14 and 15 (JAs IB, Appendix A), Staff does not oppose the commitments/conditions agreed to by JAs in JAs' Appendix A. JAs' Initial Brief, Appendix A,

conditions/commitments 2, 5, 14 and 15 address issues raised by Staff, and as discussed above there is not complete agreement between Staff and JAs on those four issues.

Subsequent to the filing of initial briefs, the JAs agreed to two more conditions which were the subject of Appendix C to Staff's initial brief. The agreed to language is discussed below.

## **2. JAs' Other Finance Related Commitments with Staff**

### **H. Commissioners' Data Request**

#### **I. Staff's Proposed Post-Hearing Conditions Resulting From Commission-Initiated Investigation, Docket No. 15-0186**

In its initial brief, Staff proposed two post-hearing conditions resulting from the Commission-initiated investigation in Docket No. 15-0186.

Staff's first condition was:

JAs shareholders shall be responsible for and shall not be permitted to recover through rates any expenses, costs, fines, penalties, fees or economic losses of any description whatever, however incurred, arising out of misconduct, unlawful or criminal activity discovered in the course of any investigation into the two anonymous whistleblower letters currently the subject of a Commission-initiated investigation in Docket No. 15-0186. The investigation shall not be limited to Docket No. 15-0186, but shall encompass any other related state or federal investigation. WEC and Integrys shall be permitted to enter into a contractual arrangement regarding this liability. (Staff IB, Appendix C, #1)

Staff's second condition was:

WEC shall terminate from employment or any contractual relationship any officers, employees, agents or representatives of JAs found to have attempted to frustrate or improperly influence the AMRP audit, or any officers, employees, agents or representatives of JAs otherwise found to have committed material misconduct. (Staff IB, Appendix C, #2)

It is Staff's understanding that Staff and the JAs have reached agreement on the following Staff investigation related conditions:

1. In the event that the Commission determines, as a result of any investigation into the two anonymous whistleblower letters currently the subject of a Commission-initiated investigation in Docket No. 15-0186, that any of the Joint Applicants (including any of their employees, agents, contractors, or representatives) are responsible for misconduct or unlawful or criminal activity, then the Joint Applicants' shareholders shall be responsible for and shall not be permitted to recover through rates any expenses, costs, fines, penalties, fees or economic losses of any description whatever, however incurred, that the Commission determines to have arisen from such misconduct or unlawful or criminal activity. As used in this condition, the term "investigation" shall not be limited to Docket No. 15-0186, but shall encompass any other related state or federal investigation. As used in this condition, the term "misconduct" shall mean wrongdoing or disregard for compliance with applicable laws, rules, regulations, Commission Orders, and/or well-established industry standards. Wisconsin Energy and Integrys shall be permitted to enter into a contractual arrangement regarding this liability.

2. In the event that the Commission determines, as a result of any investigation into the two anonymous whistleblower letters currently the subject of a Commission-initiated investigation in Docket No. 15-0186, that an officer, employee, agent or representative of the Joint Applicants either (a) attempted to prevent from being accomplished or improperly influence the investigation of the AMRP being conducted by the Liberty Consulting Group pursuant to the Commission's final Order in Docket Nos. 12-511/12-0512 (cons.) or (b) committed material misconduct or unlawful or criminal activity, then Wisconsin Energy shall take all available and appropriate action(s) to terminate from employment or any contractual relationship that officer, employee, agent or representative of the Joint Applicants. As used in this condition, the term "investigation" shall not be limited to Docket No. 15-0186, but shall encompass any other related state or federal investigation. As used in this condition, the term "misconduct" shall mean wrongdoing or disregard for compliance with applicable laws, rules, regulations, Commission Orders, and/or well-established industry standards.

Based upon that understanding, Staff supports as conditions for the reorganization, the language above, instead of the two conditions contained in Appendix C to Staff's initial brief.

#### IV. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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